

Introduced by Senator Knight

February 22, 2013

An act to amend Section 1016.5 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 653, as introduced, Knight. Criminal procedure: pleas.

Existing law requires the court, prior to the acceptance of a plea of guilty or nolo contendere, to advise the defendant that if he or she is not a citizen, conviction of the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization. After January 1, 1978, if the court fails to advise the defendant, as required, and the defendant shows that conviction of the offense to which the defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on the defendant's motion, is required to vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty.

This bill would require the motion to be brought before the expiration of the time period for the destruction of the court records corresponding to the defendant's offense.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1016.5 of the Penal Code is amended to
2 read:

1 1016.5. (a) Prior to acceptance of a plea of guilty or nolo
2 contendere to any offense punishable as a crime under state law,
3 except offenses designated as infractions under state law, the court
4 shall administer the following advisement on the record to the
5 defendant:

6 If you are not a citizen, you are hereby advised that conviction
7 of the offense for which you have been charged may have the
8 consequences of deportation, exclusion from admission to the
9 United States, or denial of naturalization pursuant to the laws of
10 the United States.

11 (b) (1) Upon request, the court shall allow the defendant
12 additional time to consider the appropriateness of the plea in light
13 of the advisement as described in this section. If, ~~after January 1,~~
14 ~~1978,~~ the court fails to advise the defendant as required by this
15 section and the defendant shows that conviction of the offense to
16 which *the* defendant pleaded guilty or nolo contendere may have
17 the consequences for the defendant of deportation, exclusion from
18 admission to the United States, or denial of naturalization pursuant
19 to the laws of the United States, the court, on defendant's motion,
20 shall vacate the judgment and permit the defendant to withdraw
21 the plea of guilty or nolo contendere, and enter a plea of not guilty.
22 Absent a record that the court provided the advisement required
23 by this section, the defendant shall be presumed not to have
24 received the required advisement.

25 (2) *A motion brought pursuant to this section shall be brought*
26 *before the expiration of the applicable time period for the*
27 *destruction of court records corresponding to the defendant's*
28 *offense, as described in subdivision (e) of Section 68152 of the*
29 *Government Code.*

30 (c) With respect to pleas accepted prior to January 1, 1978, it
31 is not the intent of the Legislature that a court's failure to provide
32 the advisement required by subdivision (a) ~~of Section 1016.5~~
33 should require the vacation of judgment and withdrawal of the
34 plea or constitute grounds for finding a prior conviction invalid.
35 ~~Nothing in this~~ This section, however, ~~shall be deemed to inhibit~~
36 *does not prohibit* a court, in the sound exercise of its discretion,
37 from vacating a judgment and permitting a defendant to withdraw
38 a plea.

39 (d) The Legislature finds and declares that in many instances
40 involving an individual who is not a citizen of the United States

1 charged with an offense punishable as a crime under state law, a
2 plea of guilty or nolo contendere is entered without the defendant
3 knowing that a conviction of such offense is grounds for
4 deportation, exclusion from admission to the United States, or
5 denial of naturalization pursuant to the laws of the United States.
6 Therefore, it is the intent of the Legislature in enacting this section
7 to promote fairness to ~~such~~ *those* accused individuals by requiring
8 in ~~such~~ *those* cases that acceptance of a guilty plea or plea of nolo
9 contendere be preceded by an appropriate warning of the special
10 consequences for ~~such~~ *a* the defendant which may result from the
11 plea. It is also the intent of the Legislature that the court in ~~such~~
12 *those* cases shall grant the defendant a reasonable amount of time
13 to negotiate with the prosecuting agency in the event the defendant
14 or the defendant's counsel was unaware of the possibility of
15 deportation, exclusion from admission to the United States, or
16 denial of naturalization as a result of conviction. It is further the
17 intent of the Legislature that at the time of the plea ~~no~~ *a* defendant
18 shall *not* be required to disclose his or her legal status to the court.